

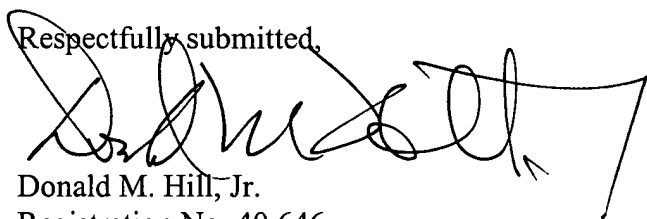
REMARKS/ARGUMENTS

Claims 1-12 are pending. In the final Office Action, Claims 1-12 were rejected based on Kunz alone or in combination with Hatano. The subsequent Advisory Action elaborated that in the Examiner's opinion the term "metallized" in the claims does not preclude the inclusion of metal oxide in the layer of metallization because the claims employ the open "comprising" term.

Applicant has amended the claims to recite that the non-foil-based retort packaging structure includes a barrier layer consisting essentially of metallized polyester. In contrast, Kunz's barrier layer consists of polyester having a coating of metal oxide or a coating containing mostly metal oxide with smaller proportions of the pure metal. Kunz thus does not teach or suggest a barrier layer consisting essentially of metallized polyester, since the term "metallized polyester" has an art-recognized meaning that does not permit the layer of metal to include a large proportion of metal oxide.

For these reasons, it is respectfully submitted that the claims are patentable over the cited references.

Respectfully submitted,

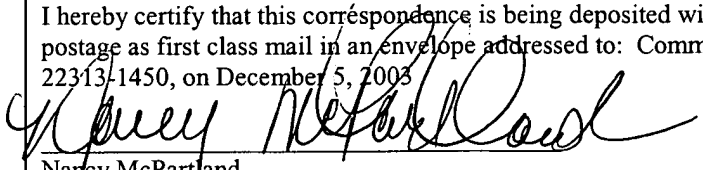


Donald M. Hill, Jr.
Registration No. 40,646

Customer No. 00826
ALSTON & BIRD LLP
Bank of America Plaza
101 South Tryon Street, Suite 4000
Charlotte, NC 28280-4000
Tel Charlotte Office (704) 444-1000
Fax Charlotte Office (704) 444-1111

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on December 5, 2003



Nancy McPartland

CLT01/4622404v1